IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO.3 OF 2003

1. Alice Elizabeth D'Souza)
Aged 49 years Occupation:)
Service, residing at 67/F,)
Railway Quarters, Vile Parle)
East, Mumbai - 400 057.)
)
2. Alwin Mathew D'Souza.)
Aged 12 years, Occupation:)
Student, Minor through his)
mother and natural guardian)
Mrs.Alice Elizabeth D'Souza)
residing at 67/F, Railway)
Quarters, Vile Parle (East))
Mumbai - 400 057.) ...Plaintiffs.

VS.

1. Motor Vessel Magalam)
a Motor Vessel flying the)
Indian Flat registered at)
Mumbai at present plying)
between various ports on the)
Western Coast of India owned)
by Vikrant Ispat a unit of)
Grasim Industries Ltd.)
)
2. Vikrant Ispat a unit of)
Grasim Industries Ltd. a Public)
Limited Company registered)
under the Indian Companies)
Act,1956 having its registered)
office at Birlagram Nagda -)
456331 and also at Ahura Centre,)
1st floor, 82, Mahakali Caves)
Road, Andheri (East),)
Mumbai - 400 093.)
)
3. Binny Ship Management Ltd.,)
a public Limited Company)
registered under the Indian)
Companies Act,1956 having its)
registered office at 101,)

Maker Chambers VI, 220 Nariman)
Point, Mumbai - 400021.) ... Defendants.

Mr.M.S.Bhandari i/b. Ms.Suman Jain, for Plaintiffs

Mr.Kamal Khata with Ms.N.Sumnani i/b. Bhatt & Saldhana, for Defendan nos.1 and 2.

Mr.H.Toor i/b. Mr.G.C.Mohanty, for Defendant no.3

CORAM: D.K.DESHMUKH,J.

DATED: 8th NOVEMBER,2006

ORAL JUDGMENT

1. The plaintiffs seek a decree in the amount of Rs.45,60,000/- (Rupees Forty Five lakhs Sixty thousand only) with interest. The facts that are relevant are that the plaintiffs are the widow and the son of Mr.Edwin D'Souza who expired on 13th September,1999. The defendant no.1 is a vessel flying the Indian flag of which the defendant no.2 is the owner. The defendant no.3 is the agent of defendant no.2 and has been acting for and on behalf of defendant no.2 particularly in respect of employment of personnel on the motor vessels of defendant no.2. According to the plaintiffs, at the time of his death deceased Edwin D'Souza was employed by the defendant no.2 as Chief Engineer of defendant no.1 vessel. According to the plaintiffs, while on

duty he suffered heart attack and due to lack of proper care expired on 13.9.1999. According to the plaintiff, the deceased was a member of the Maritime Union of India which is an organisation representing the member/officers of the Merchant Navy in India and looks after the interest of the Officers working on board Motor vessels. According to the plaintiffs, the second defendant is member of the Indian National Shipowners' Association. According to the plaintiffs, there is an agreement reached between the Maritime Union of India and the Indian National Shipowners' Association relating to terms and conditions of employment of officers working on motor vessels. According to the plaintiffs, as per clause 103 of that agreement in the event of death of an officer working on a vessel his heirs are entitled to lump-sum compensation at the rate 110 months basic wages subject to a minimum of Rs.9,00,000/-. According to the plaintiffs, at the time of his death the deceased was employed by the defendant no.2 and was receiving wages at the rate of Rs.42,000/- per month and therefore, the plaintiffs are claiming compensation to the tune of Rs.45,60,000/-. The plaintiffs rely on some documents which are filed alongwith the plaint.

2. All the defendants have filed their written statements. The defendant no.1 has adopted the written statement of defendant no.2. According to the written statement of defendant no.2, the defendant no.2 does not deny that the deceased was employed with the defendant no.2 at the time of his death. According to the defendant no.2 it is not a member of the Indian Shipowners' Association and therefore, the terms of the contract between the Indian Shipowners Association and the Maritime Union of India are not applicable. According to the defendant no.2 the deceased was receiving consolidated salary of Rs.42,000/-. Rs.42,000/- was not his basic wages and therefore, the plaintiffs are not entitled to death compensation at 110 times the monthly wages of Rs.42,000/-. So far as defendant no.3 is concerned, the defendant no.3 states that the defendant no.2 is the member of Indian National Shipowners' Association. The defendant no.3 states that the basic wages of the deceased were 16,360/- and not Rs.42,000/- as claimed by the plaintiffs, and therefore, compensation of Rs.5,00,000/- was offered which was not accepted by the plaintiffs. On the basis of pleadings of the parties, the Court by order dated 11th August,2005 has framed the following issues:-

"(1) Do the plaintiffs prove that they have any cause of action against the defendants ?

(2) Do the plaintiffs prove that they are the only surviving heirs under the Indian Succession Act,1925 of the late Mr.Edwin D'Souza ?

(3) Do the plaintiffs prove that they are entitled to a decree against defendants for the sum of Rs.45,60,000/- with interest thereon at 18% from the date of claim and/or till actual payment ?

3. On behalf of plaintiffs, the plaintiff no.1 has been examined as witness. On behalf of plaintiffs one Mr.S.S.Khan, General Secretary of the Maritime Union of India has also been examined as witness. Both the witnesses have produced documents on record. The defendants have not led any oral evidence.

ISSUE NOS.1 to 3.

4. The plaintiff no.1 has entered the witness box and she has stated that she is widow of the deceased and the plaintiff no.2 is their son. Perusal of her cross examination shows that on this aspect of the matter she has not even been cross-examined and therefore, it can be safely said that the plaintiffs have established that there are the only surviving heirs of the deceased. Though in the written statement the defendant no.2 has denied that the defendant no.2 is liable to pay any compensation to the plaintiffs as per the Maritime Union of India agreement, the correspondence that has been produced on record reveals a completely different picture. At Exhibit P-10 on record is a letter dated 22.9.1999 addressed by the Master of defendant no.1 vessel. A copy of that letter is forwarded to the Shipping Master, Mormugao and it is stated that "As per Late Edwin D'Souza Chief Engineer contract, he was covered under the company's P & I Club and compensation would be settled in due course of time." Thus, the Master of defendant no.1 vessel admits that as per the service contract of the deceased his next-of-kin is entitled to death compensation. A fax dated 21.9.1999 is sent by the defendant no.3 who is admittedly the agent of

defendant no.2 to Maritime Union of India. A copy of that fax was sent by the Maritime Union of India to the plaintiff no.1. That fax reads as under:-

> "Reference to the telecon with Capt.Adam (General Secretary) regarding Late Mr.Edwin D'Souza, Ex-Chief Engineer Mangalam, we hereby confirm that the owners M/s.Vikram Shipping has taken up the matter with the P&I and they shall pay the Death Compensation as per M.U.I. Agreement to his next of kin."

Thus, the defendant no.3 who is agent of the defendant no.2 accepts the liability of defendant no.2 to make payment of death compensation to the plaintiffs in accordance with M.U.I. agreement. So far as M.U.I. agreement is concerned, it is at Exhibit P-25. Perusal of that agreement shows that in the event of death of an officer on board of vessel the next of kin becomes entitled to receive compensation at 110 months basic wages subject to minimum of Rs.9,00,000/-. Therefore, the question that arises for consideration is what were the basic wages of the deceased. For deciding the question as to what were the basic wages of the deceased at the

time of his death, one has to refer to the contract of employment. The contract of employment dated 1.9.1999 shows that the deceased was appointed on contractual basis on a consolidated gross monthly salary of Rs.42,000/- and allowance alongwith the overtime of all kinds and short hand wages arriving out of short manning on board at any time as specified in M.U.I./INSA agreement. Perusal of the correspondence on record shows that it is the case of the defendants that as per the M.U.I. agreement basic wages of the Chief Engineer are Rs.16,360 and therefore, the plaintiffs should be entitled to compensation 110 times of that amount and not 110 times of gross salary fixed in the contract. Therefore, the only question that is to be decided is whether the plaintiffs are entitled to death compensation at 110 times of Rs.16,360/- or 110 times of Rs.42,000/-. So far as this aspect of the matter is concerned, though the relevant clause 22 of the agreement says 110 months basic wages, the agreement nowhere defines the term 'basic wages'. The documentary evidence that has been produced on record by the plaintiffs, however, indicates that the basic wages would be the wages which the deceased was entitled to receive. Though, according to the defendants, the plaintiffs cannot claim Rs.42,000/-

as basic wages of the deceased and according to them it is the consolidated monthly salary, the defendants have not produced any evidence on record to prove their case. As observed above, so far as the documentary evidence and the oral evidence produced by the plaintiffs is concerned, in my opinion, it clearly shows that the plaintiffs would be entitled to compensation at 110 times of Rs.42,000/- being monthly wages of the deceased. It was for the defendants to lead evidence to prove their defence that irrespective of the contract of employment, for the purpose of computing the death compensation the basic wages of the deceased will have to be taken at Rs.16,360/-. As the defendants have not led any evidence, the oral and documentary evidence produced on behalf of the plaintiffs have to be accepted and if so done, it establishes that not only the plaintiffs have cause of action against the defendants but it also shows that the plaintiffs are entitled to a decree as claimed by them in that respect.

5. In the result therefore, the suit is decreed in terms of prayer clause (a) and (e).